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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,160	10/23/2003	Ulrich Deiss	2001P13005WOUS	8357
46726 7590 12/13/2007 BSH HOME APPLIANCES CORPORATION INTELLECTUAL PROPERTY DEPARTMENT 100 BOSCH BOULEVARD NEW BERN, NC 28562			EXAMINER TRAN, HANH VAN	
			ART UNIT 3637	PAPER NUMBER
			MAIL DATE 12/13/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/692,160	<b>Applicant(s)</b> DEISS ET AL.	
	<b>Examiner</b> Hanh V. Tran	<b>Art Unit</b> 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 September 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 13, 14, 18, 19, 22 and 23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-14, 18-19, 22-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This is the Final Office Action from the examiner in charge of this application in response to applicant's amendment dated 9/19/2007.

#### ***Specification***

2. The disclosure is objected to because of the following informalities: page 7, lines 12-15, it is not clear how it is possible for the basket support plate 1 to be disengaged from the dishware basket 10 as disclosed? What about the guide elements 7 and 8" (which are parts of the support plate 1)? The guide elements appears to still be engaged with the basket struts.

Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 13-14, 18-19, 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 18 (1) line 17, since line 16 recited the adjustment lever including a handle end, the recitation on line 17 of a catch hook on "a handle end" renders the claim indefinite for failing to clearly define whether this handle end is the same or different from the one on line 16, (2) line 21, "said opposite direction" lacks antecedent basis, (3) line 31, "said first direction" lacks antecedent basis, (4) lines 21-22, the limitation "means for biasing said adjustment lever...toward said basket support plate" is indefinite for failing to clearly the define the metes and bounds of the

claimed invention; it is not clear what applicant is trying to claim here, (5) line 27, since the preamble clearly indicates the subcombination of a device is being claimed, the dishware basket is only functionally recited, line 27, the positive recitation of the adjustment lever "automatically engages one of the horizontally extending basket struts of the dishwasher basket" should be "configured to automatically engages one of the horizontally extending basket struts of the dishware basket", (6) lines 30-36, it is not clear how it is possible that when the "handle end of the adjustment lever (which having the catch hook 6 arranged thereon) moves in a direction toward the interior of the dishware basket, a guide element of the basket support plate being disengaged from the dishware basket to allow the basket to move from an upper position to a lower position; what about the catch hook 6? When the handle end moves toward the interior of the dishware basket, wouldn't the catch hook prevent movement of the basket from the upper position to the lower position? How does the guide element disengage from the dishware basket? Since claim 18 fails to clearly define the metes and bounds of the claimed invention, all above listed claims will be examined as best understood.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 13-14, 18-19, 22, as best understood, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 0848930 to Bertazzoni.

Bertazzoni discloses a device for adjusting the height position of a dishware basket comprising all the elements recited in the above listed claims, such as shown in Figs 1-2, including a basket support plate 1-2 adapted to be mounted on a side wall of the dishware basket, said basket support plate including rollers 4 mounted thereto and having a recess; an adjustment lever 3 pivotally mounted to the basket support plate such that a handle part of the adjustment lever may be pivoted toward and away from the basket support plate, said adjustment lever 3 including a handle end located in said recess formed in said basket support plate; a catch hook 3b arranged on said handle end of said adjustment lever 3 and located in said recess of said basket support plate so as to be oriented to the dishware basket interior when said basket support plate is mounted on a side wall of the dishware basket; and means 3c for biasing said adjustment lever to move in a direction opposite from the interior of the dishware basket toward said basket support plate, said biasing means 3c normally maintaining said handle end of said adjustment lever in a non-actuated disposition in which said catch hook extends into the path of movement of the dishwasher basket such that, when the dishware basket is moved from a lower height position into an upper height position, said catch hook on said handle end of said adjustment lever configured to automatically engage one of the horizontally extending basket struts of the dishwasher basket as the dishware basket completes its movement from the lower height position into the upper height position; and actuation movement of said handle part of said adjustment lever in a first direction from said basket support plate toward the interior of the dishware basket against the bias of said biasing means effects disengagement of a guide element of

said basket support plate from the dishware basket, whereupon the dishware basket is free to move automatically under the action of gravity from the upper height position into the lower height position, wherein said biasing means includes a spring coupled to said adjustment lever, said spring biasing said adjustment lever to swivel back in said opposite direction after said handle part of said adjustment lever is actuated in said first direction, wherein said adjustment lever is pivotally mounted to said basket support plate near an upper edge of said basket support plate in said recess.

***Response to Arguments***

7. Applicant's arguments filed 9/19/2007 have been fully considered but they are not persuasive. In response to applicant's arguments on pages 6-7 that only the guide and support plate 1 corresponds to the claimed limitation of "a basket support plate adapted to be mounted on a side wall of the dishware basket, said basket support plate including rollers mounted thereto", and the plate 2 of Bertazzoni fails to have rollers mounted thereto, the examiner respectfully takes the position that (1) the claimed language fails to provide adequate structural limitations to the claim in order to distinguish from the prior art of record, there is nothing in the claimed language which exclusively states that the basket support plate can only comprise of a single element, and (2) the term "comprising" is inclusive or open-ended transitional phrase and does not exclude additional, unrecited elements; therefore, plate 2 can be construed as part of the basket support plate and does not have to disclose having rollers mounted thereto (since element 1 already shows rollers mounted thereto).

8. In response to applicant's arguments on page 7 that Bertazzoni fails to disclose the claimed limitation of the latch 3 mounted to the basket support plate, but rather mounted to plate 2, the examiner respectfully takes the position that as stated in the claimed rejection and discussed in paragraph #7 above, plate 2 is defined as part of the basket support plate, thus meets the claimed limitation.

9. In response to applicant's remarks on page 7 that the height adjuster of Bertazzoni requires several elements and suffers from the problems being solved by the claimed invention, the examiner respectfully takes the position that the claimed language fails to provide adequate structural limitations to the claim in order to distinguish from the prior art of record, and the term "comprising" is inclusive or open-ended transitional phrase and does not exclude additional, unrecited elements.

### ***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh V. Tran whose telephone number is (571) 272-6868. The examiner can normally be reached on Monday-Thursday, and alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

HVT *HVT*  
December 06, 2007

LANNA MAI  
SUPERVISORY PATENT EXAMINER  
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